

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1353**

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**Introduced by Senator Pan**

February 19, 2016

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An act to amend ~~Sections 7513.6 and 7513.75 of the Government Code, relating to retirement. Section 22955.1 of the Education Code, relating to state teachers' retirement.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1353, as amended, Pan. ~~Public employee retirement systems: prohibited investments. State Teachers' Retirement System: funding.~~

*Existing law, the Teachers' Retirement Law, establishes the State Teachers' Retirement System and creates the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program, based on final compensation, credited service, and age at retirement, subject to certain variations. The Defined Benefit Program is funded by employer and employee contributions, investment returns, and state appropriations, which are deposited or credited to the Teachers' Retirement Fund. Existing law prescribes methods for calculating the amounts of employer and employee contributions as well as state appropriations for support of the system. For the 2017–18 fiscal year, and each fiscal year thereafter, existing law requires the board to increase or decrease certain percentages relating to the state appropriation to reflect the contribution required to eliminate the unfunded actuarial obligation of the system. Existing law prohibits these requirements from being construed as applicable to any unfunded actuarial obligation resulting from any benefit increase*

*or change in member or employer contribution rate under this part that occurs after July 1, 1990.*

*This bill would qualify this prohibition to clarify that specified state contributions made in this regard be allocated to reduce any unfunded actuarial obligation resulting from the benefits and contribution rates in effect as of July 1, 1990.*

~~The California Constitution grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. The California Constitution qualifies this grant of powers by reserving to the Legislature the authority to prohibit investments if it is in the public interest and the prohibition satisfies standards of fiduciary care and loyalty required of a retirement board. Existing law prohibits the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System from investing, as specified, in Sudan and in thermal coal companies, subject to the boards' plenary authority and fiduciary responsibility for investment of moneys and administration of the systems. Existing law requires the boards to provide reports to the Legislature in regard to their actions in connection with these provisions.~~

~~This bill would provide, in connection with the prohibitions described above, that a board determination that an action fails to satisfy constitutional fiduciary responsibilities requires a recorded rollcall vote of the full board, following a presentation and discussion of findings in an open session during a properly noticed public hearing, as specified. The bill would also require that proposed findings be made public 72 hours before board consideration and that the findings and any public comments regarding adopted findings and determinations be included in the required reports to the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 22955.1 of the Education Code is amended  
2     to read:

3     22955.1. (a) Notwithstanding Section 13340 of the  
4     Government Code, commencing July 1, 2003, a continuous  
5     appropriation is hereby annually made from the General Fund to  
6     the Controller, pursuant to this section, for transfer to the Teachers'

1 Retirement Fund. The total amount of the appropriation for each  
2 year shall be equal to 2.017 percent of the total of the creditable  
3 compensation of the fiscal year ending in the immediately  
4 preceding calendar year upon which members' contributions are  
5 based, as reported annually to the Director of Finance, the  
6 Chairperson of the Joint Legislative Budget Committee, and the  
7 Legislative Analyst pursuant to Section 22955.5, and shall be  
8 divided into four equal payments. The payments shall be made on,  
9 or the following business day after, July 1, October 1, December  
10 15, and April 15 of each fiscal year.

11 (b) (1) Commencing July 1, 2014, the amount of the  
12 appropriation required under subdivision (a) shall increase by the  
13 following percentages of the creditable compensation upon which  
14 that appropriation is based:

15 (A) On July 1, 2014, by 1.437 percent.

16 (B) On July 1, 2015, by 2.874 percent.

17 (C) On July 1, 2016, by 4.311 percent.

18 (2) For fiscal year 2017–18 and each fiscal year thereafter, the  
19 board shall increase or decrease the percentage specified in this  
20 subdivision from the percentage paid during the prior fiscal year  
21 to reflect the contribution required to eliminate the remaining  
22 unfunded actuarial obligation, as determined by the board based  
23 upon a recommendation from its actuary. If a rate increase is  
24 required, the adjustment may be for no more than 0.50 percent per  
25 year of the total of the creditable compensation of the fiscal year  
26 ending in the immediately preceding calendar year upon which  
27 members' contributions are based. At any time when there is not  
28 an unfunded actuarial obligation as determined by the board, the  
29 percentage specified in this subdivision shall be reduced to zero.

30 (c) Pursuant to Section 22001 and case law, members are entitled  
31 to a financially sound retirement system. It is the intent of the  
32 Legislature that this section shall provide the retirement fund stable  
33 and full funding over the long term.

34 (d) This section continues in effect but in a somewhat different  
35 form, fully performs, and does not in any way unreasonably impair,  
36 the contractual obligations determined by the court in California  
37 Teachers' Association v. Cory, 155 Cal.App.3d 494.

38 (e) Subdivision (b) shall not be construed to be applicable to  
39 any unfunded actuarial obligation resulting from any benefit  
40 increase or change in ~~member or employer~~ contribution rate under

1 this part that occurs after July 1, ~~1990~~. 1990, *except that state*  
2 *contributions made pursuant to subdivision (b) shall be allocated*  
3 *to reduce the unfunded actuarial obligation resulting from the*  
4 *benefits and contribution rates in effect as of July 1, 1990.*

5 (f) The provisions of this section shall be construed and  
6 implemented to be in conformity with the judicial intent expressed  
7 by the court in California Teachers' Association v. Cory, 155  
8 Cal.App.3d 494.

9 (g) (1) Except as described in paragraph (2), this section shall  
10 become inoperative on July 1, 2046, and as of January 1, 2047, is  
11 repealed.

12 (2) Notwithstanding paragraph (1), on July 1 of the first fiscal  
13 year after a 30-day notice has been sent to the Joint Legislative  
14 Budget Committee and the Controller in compliance with  
15 subdivision (d) of Section 22957, this section shall become  
16 inoperative and, as of the following January 1, is repealed.

17 ~~SECTION 1. Section 7513.6 of the Government Code is~~  
18 ~~amended to read:~~

19 ~~7513.6. (a) As used in this section, the following definitions~~  
20 ~~shall apply:~~

21 ~~(1) "Active business operations" means a company engaged in~~  
22 ~~business operations that provide revenue to the government of~~  
23 ~~Sudan or a company engaged in oil-related activities.~~

24 ~~(2) "Board" means the Board of Administration of the Public~~  
25 ~~Employees' Retirement System or the Teachers' Retirement Board~~  
26 ~~of the State Teachers' Retirement System, as applicable.~~

27 ~~(3) "Business operations" means maintaining, selling, or leasing~~  
28 ~~equipment, facilities, personnel, or any other apparatus of business~~  
29 ~~or commerce in Sudan, including the ownership or possession of~~  
30 ~~real or personal property located in Sudan.~~

31 ~~(4) "Company" means a sole proprietorship, organization,~~  
32 ~~association, corporation, partnership, venture, or other entity, its~~  
33 ~~subsidiary or affiliate that exists for profitmaking purposes or to~~  
34 ~~otherwise secure economic advantage. "Company" also means a~~  
35 ~~company owned or controlled, either directly or indirectly, by the~~  
36 ~~government of Sudan, that is established or organized under the~~  
37 ~~laws of or has its principal place of business in the Republic of the~~  
38 ~~Sudan.~~

39 ~~(5) "Government of Sudan" means the government of Sudan~~  
40 ~~or its instrumentalities.~~

1     ~~(6) “Invest” or “investment” means the purchase, ownership,~~  
2     ~~or control of stock of a company, association, or corporation, the~~  
3     ~~capital stock of a mutual water company or corporation, bonds~~  
4     ~~issued by the government or a political subdivision of Sudan,~~  
5     ~~corporate bonds or other debt instruments issued by a company,~~  
6     ~~or the commitment of funds or other assets to a company, including~~  
7     ~~a loan or extension of credit to that company.~~

8     ~~(7) “Military equipment” means weapons, arms, or military~~  
9     ~~defense supplies.~~

10    ~~(8) “Oil-related activities” means, but is not limited to, the export~~  
11    ~~of oil, extracting or producing oil, exploration for oil, or the~~  
12    ~~construction or maintenance of a pipeline, refinery, or other oil~~  
13    ~~field infrastructure.~~

14    ~~(9) “Public employee retirement funds” means the Public~~  
15    ~~Employees’ Retirement Fund described in Section 20062 of this~~  
16    ~~code, and the Teachers’ Retirement Fund described in Section~~  
17    ~~22167 of the Education Code.~~

18    ~~(10) “Research firm” means a reputable, neutral third-party~~  
19    ~~research firm.~~

20    ~~(11) “Substantial action” means a boycott of the government~~  
21    ~~of Sudan, curtailing business in Sudan until that time described in~~  
22    ~~subdivision (m), selling company assets, equipment, or real and~~  
23    ~~personal property located in Sudan, or undertaking significant~~  
24    ~~humanitarian efforts in the eastern, southern, or western regions~~  
25    ~~of Sudan.~~

26    ~~(12) “Sudan” means the Republic of the Sudan, a territory under~~  
27    ~~the administration or control of the Sudan, including but not limited~~  
28    ~~to, the Darfur region, or an individual, company, or public agency~~  
29    ~~located in Khartoum, northern Sudan, or the Nile River Valley~~  
30    ~~that supports the Republic of the Sudan.~~

31    ~~(b) The board shall not invest public employee retirement funds~~  
32    ~~in a company with business operations in Sudan that meets all of~~  
33    ~~the following criteria:~~

34    ~~(1) The company is engaged in active business operations in~~  
35    ~~Sudan. If that company is not engaged in oil-related activities, that~~  
36    ~~company also lacks significant business operations in the eastern,~~  
37    ~~southern, and western regions of Sudan.~~

38    ~~(2) Either of the following apply:~~

39    ~~(A) The company is engaged in oil-related activities or energy~~  
40    ~~or power-related operations, or contracts with another company~~

1 with business operations in the oil, energy, and power sectors of  
2 Sudan, and the company failed to take substantial action related  
3 to the government of Sudan because of the Darfur genocide.

4 (B) The company has demonstrated complicity in the Darfur  
5 genocide.

6 (e) Notwithstanding subdivision (b), the board shall not invest  
7 public employee retirement funds in a company that supplies  
8 military equipment within the borders of Sudan. If a company  
9 provides equipment within the borders of Sudan that may be readily  
10 used for military purposes, including, but not limited to, radar  
11 systems and military-grade transport vehicles, there shall also be  
12 a strong presumption against investing in that company unless that  
13 company implements safeguards to prevent the use of that  
14 equipment for military purposes.

15 (d) (1) The board shall, without regard to the provisions  
16 regarding competitive bidding, contract with a research firm or  
17 firms to determine those companies that have business operations  
18 in Sudan. Those research firms shall, in the aggregate, obtain data  
19 on a majority of companies with business operations in Sudan. On  
20 or before March 30, 2007, those research firms shall report any  
21 findings to the board and those research firms shall submit further  
22 findings to the board if there is a change of circumstances in Sudan.

23 (2) In addition to the reports described in paragraph (1), the  
24 board shall take all of the following actions no later than March  
25 30, 2007:

26 (A) Review publicly available information regarding companies  
27 with business operations in Sudan.

28 (B) Contact other institutional investors that invest in companies  
29 with business operations in Sudan.

30 (C) Send written notice to a company with business operations  
31 in Sudan that the company may be subject to this section.

32 (e) (1) The board shall determine, by the next applicable board  
33 meeting and based on the information and reports described in  
34 subdivision (d), if a company meets the criteria described in  
35 subdivision (b) or (c). If the board plans to invest or has  
36 investments in a company that meets the criteria described in  
37 subdivision (b) or (c), that planned or existing investment shall be  
38 subject to subdivisions (g) and (h).

39 (2) Investments of the board in a company that does not meet  
40 the criteria described in subdivision (b) or (c) or does not have

1 active business operations in Sudan are not subject to subdivision  
2 (h), provided that the company does not subsequently meet the  
3 criteria described in subdivision (b) or (c) or engage in active  
4 business operations. The board shall identify the reasons why that  
5 company does not satisfy the criteria described in subdivision (b)  
6 or (c) or does not engage in active business operations in the report  
7 to the Legislature described in subdivision (i).

8 (f) (1) Notwithstanding subdivision (c), if the board's  
9 investment in a company described in subdivision (b) or (c) is  
10 limited to investment via an externally and actively managed  
11 commingled fund, the board shall contact that fund manager in  
12 writing and request that the fund manager remove that company  
13 from the fund as described in subdivision (h). On or before June  
14 30, 2007, if the fund or account manager creates a fund or account  
15 devoid of companies described in subdivision (b) or (c), the transfer  
16 of board investments from the prior fund or account to the fund  
17 or account devoid of companies with business operations in Sudan  
18 shall be deemed to satisfy subdivision (h).

19 (2) If the board's investment in a company described in  
20 subdivision (b) or (c) is limited to an alternative fund or account,  
21 the alternative fund or account manager creates an actively  
22 managed commingled fund that excludes companies described in  
23 subdivision (b) or (c), and the new fund or account is deemed to  
24 be financially equivalent to the existing fund or account, the  
25 transfer of board investments from the existing fund or account to  
26 the new fund or account shall be deemed to satisfy subdivision  
27 (h). If the board determines that the new fund or account is not  
28 financially equivalent to the existing fund, the board shall include  
29 the reasons for that determination in the report described in  
30 subdivision (i).

31 (3) The board shall make a good faith effort to identify any  
32 private equity investments that involve companies described in  
33 subdivision (b) or (c) or are linked to the government of Sudan. If  
34 the board determines that a private equity investment clearly  
35 involves a company described in subdivision (b) or (c) or is linked  
36 to the government of Sudan, the board shall consider, at its  
37 discretion, if those private equity investments shall be subject to  
38 subdivision (h). If the board determines that a private equity  
39 investment clearly involves a company described in subdivision  
40 (b) or (c) or is linked to the government of Sudan and the board

1 does not take action as described in subdivision (h), the board shall  
2 include the reasons for its decision in the report described in  
3 subdivision (i).

4 (g) Except as described in subdivision (f) or paragraph (2) of  
5 subdivision (e), the board, in the board's capacity of shareholder  
6 or investor, shall notify any company described in paragraph (1)  
7 of subdivision (e) that the company is subject to subdivision (h)  
8 and permit that company to respond to the information and reports  
9 described in subdivision (d). The board shall request that the  
10 company take substantial action no later than 90 days from the  
11 date the board notified the company under this subdivision. If the  
12 board determines that a company has taken substantial action or  
13 has made sufficient progress towards substantial action before the  
14 expiration of that 90-day period, that company shall not be subject  
15 to subdivision (h). The board shall, at intervals not to exceed 90  
16 days, continue to monitor and review the progress of the company  
17 until that company has taken substantial action in Sudan. A  
18 company that fails to complete substantial action or continue to  
19 make sufficient progress towards substantial action by the next  
20 time interval shall be subject to subdivision (h).

21 (h) If a company described in paragraph (1) of subdivision (e)  
22 fails to complete substantial action by the time described in  
23 subdivision (g), the board shall take the following actions:

24 (1) The board shall not make additional or new investments or  
25 renew existing investments in that company.

26 (2) The board shall liquidate the investments of the board in  
27 that company no later than 18 months after this subdivision applies  
28 to that company. The board shall liquidate those investments in a  
29 manner to address the need for companies to take substantial action  
30 in Sudan and consistent with the board's fiduciary responsibilities  
31 as described in Section 17 of Article XVI of the California  
32 Constitution.

33 (i) On or before January 1, 2008, and every year thereafter, the  
34 board shall file a report with the Legislature. The report shall  
35 describe the following:

36 (1) A list of investments the board has in companies with  
37 business operations in Sudan, including, but not limited to, the  
38 issuer, by name, of the stock, bonds, securities, and other evidence  
39 of indebtedness.



1     ~~(2) A detailed summary of the business operations a company~~  
2     ~~described in paragraph (1) has in Sudan and whether that company~~  
3     ~~satisfies all of the criteria in subdivision (b) or (c).~~

4     ~~(3) Whether the board has reduced its investments in a company~~  
5     ~~that satisfies the criteria in subdivision (b) or (c).~~

6     ~~(4) If the board has not completely reduced its investments in~~  
7     ~~a company that satisfies the criteria in subdivision (b) or (c), when~~  
8     ~~the board anticipates that the board will reduce all investments in~~  
9     ~~that company or the reasons why a sale or transfer of investments~~  
10    ~~is inconsistent with the fiduciary responsibilities of the board as~~  
11    ~~described in Section 17 of Article XVI of the California~~  
12    ~~Constitution.~~

13    ~~(5) Any information described in subdivision (e).~~

14    ~~(6) A detailed summary of investments that were transferred to~~  
15    ~~funds or accounts devoid of companies with business operations~~  
16    ~~in Sudan as described in subdivision (f).~~

17    ~~(j) If the board voluntarily sells or transfers all of its investments~~  
18    ~~in a company with business operations in Sudan, this section shall~~  
19    ~~not apply except that the board shall file a report with the~~  
20    ~~Legislature related to that company as described in subdivision~~  
21    ~~(i).~~

22    ~~(k) (1) Nothing in this section shall require the board to take~~  
23    ~~action as described in this section unless the board determines, in~~  
24    ~~good faith, that the action described in this section is consistent~~  
25    ~~with the fiduciary responsibilities of the board as described in~~  
26    ~~Section 17 of Article XVI of the California Constitution.~~

27    ~~(2) A determination that an action described in this section~~  
28    ~~would fail to satisfy the fiduciary responsibilities of the board as~~  
29    ~~described in Section 17 of Article XVI of the California~~  
30    ~~Constitution shall require a recorded rolleall vote of the full board,~~  
31    ~~following a presentation and discussion of findings in open session,~~  
32    ~~during a properly noticed public hearing of the full board. All~~  
33    ~~proposed findings of the board shall be made public 72 hours~~  
34    ~~before they are considered by the board. The findings and any~~  
35    ~~public comments regarding the adopted findings and determinations~~  
36    ~~made pursuant to this paragraph shall be included in the report to~~  
37    ~~the Legislature required by subdivision (i).~~

38    ~~(l) Subdivision (h) shall not apply to any of the following:~~

~~(1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Sudan.~~

~~(2) Investments in a company that promotes health, education, journalistic, or religious activities in or welfare in the western, eastern, or southern regions of Sudan.~~

~~(3) Investments in a United States company that is authorized by the federal government to have business operations in Sudan.~~

~~(m) This section shall remain in effect only until one of the following occurs, and as of the date of that action, is repealed:~~

~~(1) The government of Sudan halts the genocide in Darfur for 12 months as determined by both the Department of State and the Congress of the United States.~~

~~(2) The United States revokes its current sanctions against Sudan.~~

~~SEC. 2. Section 7513.75 of the Government Code is amended to read:~~

~~7513.75.—(a) The Legislature finds and declares all of the following:~~

~~(1) The combustion of coal resources is the single largest contributor to global climate change in the United States.~~

~~(2) Climate change affects all parts of the California economy and environment, and the Legislature has adopted numerous laws to mitigate greenhouse gas emissions and to adapt to a changing climate.~~

~~(3) The purpose of this section is to require the Public Employees' Retirement System and the State Teachers' Retirement System, consistent with, and not in violation of, their fiduciary responsibilities, to divest their holding of thermal coal power as one part of the state's broader efforts to decarbonize the California economy and to transition to clean, pollution-free energy resources.~~

~~(b) As used in this section, the following definitions apply:~~

~~(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.~~

~~(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profit-making purposes or to otherwise secure economic advantage.~~

1     ~~(3) “Investment” means the purchase, ownership, or control of~~  
2     ~~publicly issued stock, corporate bonds, or other debt instruments~~  
3     ~~issued by a company.~~

4     ~~(4) “Public employee retirement funds” means the Public~~  
5     ~~Employees’ Retirement Fund described in Section 20062 of this~~  
6     ~~code, and the Teachers’ Retirement Fund described in Section~~  
7     ~~22167 of the Education Code.~~

8     ~~(5) “Thermal coal” means coal used to generate electricity, such~~  
9     ~~as that which is burned to create steam to run turbines. Thermal~~  
10    ~~coal does not mean metallurgical coal or coking coal used to~~  
11    ~~produce steel.~~

12    ~~(6) “Thermal coal company” means a publicly traded company~~  
13    ~~that generates 50 percent or more of its revenue from the mining~~  
14    ~~of thermal coal, as determined by the board.~~

15    ~~(e) The board shall not make additional or new investments or~~  
16    ~~renew existing investments of public employee retirement funds~~  
17    ~~in a thermal coal company.~~

18    ~~(d) The board shall liquidate investments in a thermal coal~~  
19    ~~company on or before July 1, 2017. In making a determination to~~  
20    ~~liquidate investments, the board shall constructively engage with~~  
21    ~~a thermal coal company to establish whether the company is~~  
22    ~~transitioning its business model to adapt to clean energy generation,~~  
23    ~~such as through a decrease in its reliance on thermal coal as a~~  
24    ~~revenue source.~~

25    ~~(e) On or before January 1, 2018, the board shall file a report~~  
26    ~~with the Legislature, in compliance with Section 9795, and the~~  
27    ~~Governor, which shall include the following:~~

28    ~~(1) A list of thermal coal companies of which the board has~~  
29    ~~liquidated its investments pursuant to subdivision (d).~~

30    ~~(2) A list of companies with which the board engaged pursuant~~  
31    ~~to subdivision (d) that the board established were transitioning to~~  
32    ~~clean energy generation, with supporting documentation to~~  
33    ~~substantiate the board’s determination.~~

34    ~~(3) A list of thermal coal companies of which the board has not~~  
35    ~~liquidated its investments as a result of a determination made~~  
36    ~~pursuant to subdivision (f) that a sale or transfer of investments is~~  
37    ~~inconsistent with the fiduciary responsibilities of the board as~~  
38    ~~described in Section 17 of Article XVI of the California~~  
39    ~~Constitution and the board’s findings adopted in support of that~~  
40    ~~determination.~~

1     ~~(f) (1) Nothing in this section shall require a board to take action~~  
2     ~~as described in this section unless the board determines in good~~  
3     ~~faith that the action described in this section is consistent with the~~  
4     ~~fiduciary responsibilities of the board described in Section 17 of~~  
5     ~~Article XVI of the California Constitution.~~

6     ~~(2) A determination that an action described in this section~~  
7     ~~would fail to satisfy the fiduciary responsibilities of the board as~~  
8     ~~described in Section 17 of Article XVI of the California~~  
9     ~~Constitution shall require a recorded rollcall vote of the full board,~~  
10    ~~following a presentation and discussion of findings in open session,~~  
11    ~~during a properly noticed public hearing of the full board. All~~  
12    ~~proposed findings of the board shall be made public 72 hours~~  
13    ~~before they are considered by the board. The findings and any~~  
14    ~~public comments regarding the adopted findings and determinations~~  
15    ~~made pursuant to this paragraph shall be included in the report to~~  
16    ~~the Legislature required by subdivision (e).~~